

DCI FILE

Sec misc

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MEMORANDUM FOR: The Director

FROM: John L. Helgerson
Director of Congressional Affairs

SUBJECT: HPSCI and DCI/SCI Secrecy Agreements

1. In your review of the package we recently prepared on the House Judiciary Committee staff's refusal to sign the DCI "Sensitive Compartmented Information Nondisclosure Agreement" (Form 4355 - Tab A), you asked how that agreement compared with the agreement which the staff of the House Permanent Select Committee on Intelligence (HPSCI) signs with that Committee ("Nondisclosure Agreement Between HPSCI Employees and the HPSCI" - Tab B). A brief comparison of the two follows.

2. In substance, the agreements are alike in many respects. The biggest overall difference between the two is in the identity of the authority which makes decisions involving the employee and the protected information. In the case of Form 4355, such decisions are made by the agency or department which last briefed the employee on Sensitive Compartmented Information (SCI) (usually the CIA). In the case of the HPSCI agreement, it is the Committee or its Chairman (although HPSCI has a long-established practice of informally vetting prospective employees with the Agency for security determinations before deciding to hire them). The two agreements also vary in the following specific areas:

-- Information Covered. In Form 4355, the information covered by the agreement is Sensitive Compartmented Information (§ 1). The coverage of the HPSCI agreement is broader: testimony in executive session; material identified as requiring protection from unauthorized disclosure; and, information classified by either HPSCI or Executive Order procedures. (§ 2).

-- "Open Sourcing." The HPSCI agreement permits the signor to "reference" material which appears in an open source so long as the open source is cited and the action does not serve to explicitly confirm what was disclosed by open source (§ 2). The SCI agreement is silent on this point.

-- Prepublication Review. Both agreements provide for prepublication review of manuscripts concerning the protected information. Under Form 4335, the entity to which any reviewable manuscripts are submitted is the agency which last authorized access to SCI information, most likely the CIA (¶ 3). Under the HPSCI agreement, reviewable manuscripts are submitted to the Chairman who "consults" with the DCI to assist in identifying information for deletion from the manuscript. Any disagreement between the Chairman and the DCI on the matter would be resolved in accordance with the HPSCI procedures governing the circumstances under which Executive Branch information may be disclosed by vote of the HPSCI (¶ 4).

-- HPSCI Employment Provisions. The HPSCI agreement contains several provisions imposing obligations on its employees that are not addressed in Form 4355. Paragraph 5 obligates the employee to report persons attempting to solicit protected information from the employee. Paragraph 6 obligates the employee to notify HPSCI when called upon to testify concerning protected information. (In contrast, Paragraph 3 of Form 4355 is a provision generally obligating the signor to seek permission before disclosing SCI information.) Paragraph 7 obligates the employee to return all protected materials when leaving HPSCI employment. These are similar to the obligations contained in the Agency's standard employment secrecy agreements.

-- Remedies for Breach. In the case of breach by the signor, Form 4355 provides for loss of access and/or contact with the agency involved (¶ 6). The HPSCI agreement does not explicitly state that breach of the agreement will result in dismissal from the staff but only that a breach of the HPSCI rules will result in dismissal or other appropriate action (¶ 8). It also provides that in the event of dismissal, the staff member will be given prior, written notice of the charges against him (¶ 9). Both agreements provide for the signor to assign all rights, title and interest in any unauthorized publication to the United States Government (Form 4355 - ¶ 12; HPSCI - ¶ 10). Both provide that nothing in the agreement waives any other legal rights the United States may have (HPSCI - ¶ 11; Form 4355 - ¶ 6). HPSCI's provides that nothing in it waives any rights of the signor (¶ 11); Form 4355 is silent on this point.

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 John L. Helgeson

Attachments

SENSITIVE COMPARTMENTED INFORMATION NONDISCLOSURE AGREEMENT

An Agreement Between _____

(Name - Printed or Typed)

and the United States

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to information or material protected within Special Access Programs, hereinafter referred to in this Agreement as Sensitive Compartmented Information (SCI). I have been advised that SCI involves or derives from intelligence sources or methods and is classified or is in the process of a classification determination under the standards of Executive Order 12356 or other Executive order or statute. I understand and accept that by being granted access to SCI, special confidence and trust shall be placed in me by the United States Government.

2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of SCI, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information or material have been approved for access to it, and I understand these procedures. I understand that I may be required to sign subsequent agreements upon being granted access to different categories of SCI. I further understand that all my obligations under this Agreement continue to exist whether or not I am required to sign such subsequent agreements.

3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SCI by me could cause irreparable injury to the United States or be used to advantage by a foreign nation. I hereby agree that I will never divulge anything marked as SCI or that I know to be SCI to anyone who is not authorized to receive it without prior written authorization from the United States Government department or agency (hereinafter Department or Agency) that last authorized my access to SCI. I understand that it is my responsibility to consult with appropriate management authorities in the Department or Agency that last authorized my access to SCI, whether or not I am still employed by or associated with that Department or Agency or a contractor thereof, in order to ensure that I know whether information or material within my knowledge or control that I have reason to believe might be SCI, or related to or derived from SCI, is considered by such Department or Agency to be SCI. I further understand that I am also obligated by law and regulation not to disclose any classified information or material in an unauthorized fashion.

4. In consideration of being granted access to SCI and of being assigned or retained in a position of special confidence and trust requiring access to SCI, I hereby agree to submit for security review by the Department or Agency that last authorized my access to such information or material, any writing or other preparation in any form, including a work of fiction, that contains or purports to contain any SCI or description of activities that produce or relate to SCI or that I have reason to believe are derived from SCI, that I contemplate disclosing to any person not authorized to have access to SCI or that I have prepared for public disclosure. I understand and agree that my obligation to submit such preparations for review applies during the course of my access to SCI and thereafter, and I agree to make any required submissions prior to discussing the preparation with, or showing it to, anyone who is not authorized to have access to SCI. I further agree that I will not disclose the contents of such preparation to any person not authorized to have access to SCI until I have received written authorization from the Department or Agency that last authorized my access to SCI that such disclosure is permitted.

5. I understand that the purpose of the review described in paragraph 4 is to give the United States a reasonable opportunity to determine whether the preparation submitted pursuant to paragraph 4 sets forth any SCI. I further understand that the Department or Agency to which I have made a submission will act upon it, coordinating within the Intelligence Community when appropriate, and make a response to me within a reasonable time, not to exceed 30 working days from date of receipt.

6. I have been advised that any breach of this Agreement may result in the termination of my access to SCI and removal from a position of special confidence and trust requiring such access, as well as the termination of my employment or other relationships with any Department or Agency that provides me with access to SCI. In addition, I have been advised that any unauthorized disclosure of SCI by me may constitute violations of United States criminal laws, including the provisions of Sections 793, 794, 798, and 952, Title 18, United States Code, and of Section 783(b), Title 50, United States Code. Nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

7. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement. I have been advised that the action can be brought against me in any of the several appropriate United States District Courts where the United States Government may elect to file the action. Court costs and reasonable attorneys fees incurred by the United States Government may be assessed against me if I lose such action.

8. I understand that all information to which I may obtain access by signing this Agreement is now and will remain the property of the United States Government unless and until otherwise determined by an appropriate official or final ruling of a court of law. Subject to such determination, I do not now, nor will I ever, possess any right, interest, title, or claim whatsoever to such information. I agree that I shall return all materials that may have come into my possession or for which I am responsible because of such access, upon demand by an authorized representative of the United States Government or upon the conclusion of my employment or other relationship with the United States Government entity providing me access to such materials. If I do not return such materials upon request, I understand this may be a violation of Section 793, Title 18, United States Code.

9. Unless and until I am released in writing by an authorized representative of the Department or Agency that last provided me with access to SCI, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to SCI, and at all times thereafter.

10. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect. This Agreement concerns SCI and does not set forth such other conditions and obligations not related to SCI as may now or hereafter pertain to my employment by or assignment or relationship with the Department or Agency.

11. I have read this Agreement carefully and my questions, if any, have been answered to my satisfaction. I acknowledge that the briefing officer has made available Sections 793, 794, 798, and 952 of Title 18, United States Code, and Section 783(b) of Title 50, United States Code, and Executive Order 12356, as amended, so that I may read them at this time, if I so choose.

NONDISCLOSURE AGREEMENT BETWEEN HPSCI EMPLOYEES AND THE HPSCI

I, _____; in consideration for being employed by or engaged by contract or otherwise to perform services for or at the request of, the House Permanent Select Committee on Intelligence (HPSCI) do hereby agree to accept as conditions precedent for my employment or engagement and for my continuing employment or engagement with the HPSCI the obligations set forth below:

1. I have read House Resolution 658 of the 95th Congress, 1st Session, which established the HPSCI. I hereby agree to be bound by the rules of the House, including those within the jurisdiction of the Committee on Standards of Official Conduct.

2. I have also read the Rules of the HPSCI and hereby agree to be bound by them. I will never divulge, publish, or reveal by writing, word, conduct, or otherwise, either during my tenure with the HPSCI or anytime thereafter, any testimony given before the HPSCI in executive session (including the name of any witness who appeared or was called to appear before the HPSCI in executive session), the contents of any material or information received or generated by the HPSCI which has been identified under established HPSCI security procedures or Executive Order or by the Director of Central Intelligence (DCI) as requiring protection from unauthorized disclosure and to which I have access during my tenure with the HPSCI staff, or any information classified under Executive Order ~~11652~~ ¹¹⁶⁵² which may otherwise come into my possession during my tenure with the HPSCI staff, to any person not a member of the HPSCI or HPSCI staff, for any purpose or in connection with any proceeding, judicial or otherwise, except as authorized by the HPSCI in accordance with Section 7 of H. Res. 658, and the HPSCI Rules, or in the event of the termination of the HPSCI in such a manner as may be determined by the House. Nothing in this section prohibits my referencing, so long as accompanied by citation, such material or information which appears in open sources provided the use of the information does not explicitly confirm the validity of the contents of the cited material.

3. I hereby agree to familiarize myself with the HPSCI security procedures and to provide at all times the required degree of protection for information and materials which come into my possession by virtue of my position with the HPSCI so that they will not be disclosed except as directed by the HPSCI in accordance with Section 7 of H. Res. 658 of the 95th Congress and the HPSCI Rules or in the event of the termination of the HPSCI in such a manner as may be determined by the House.

4. I hereby agree that the contents of any material or information which I am pledged not to divulge, publish or reveal by writing, word, conduct, or otherwise pursuant to Section 2 of this Agreement, and which is contemplated for publication or actually prepared for publication by me either during my tenure with the HPSCI staff or anytime thereafter,

will, prior to discussing it with or showing it to any publishers, editors, or literary agents, be submitted to the Chairman of the HPSCI who shall consult with the DCI or the DCI's designated representative, for the purpose of determining whether said material or information contains any information which I pledge hereby not to disclose. A good faith effort shall be made to arrive at such a determination and to notify me within 30 days. If the DCI and the Chairman disagree about its disclosure, I recognize that the procedures for disclosure of information described in Section 7 of H. Res. 658 of the 95th Congress shall be followed, or, in the event of the termination of the HPSCI, the procedures which may then be determined by the House. I further agree that I will not take any steps toward publication until I have received written permission from the Chairman of the HPSCI, or, in the event of the termination of the HPSCI, the authorization as may then be required by the House.

5. I hereby agree to report without delay to the HPSCI, or in the event of the termination of the HPSCI, the House, any incident where an attempt is made by any person not a member of the HPSCI staff to solicit from me information which I pledge hereby not to disclose.

6. I hereby agree to immediately notify the HPSCI, or in the event of HPSCI's termination, the House, in the event that I am called upon by the properly constituted authorities to testify or provide information which I am pledged hereby not to disclose. I will request that my obligation to testify is established before I do so.

7. I hereby agree to surrender to the HPSCI, or the DCI with the approval of the Chairman, upon demand by the Chairman of the HPSCI, or upon my separation from the HPSCI staff, all material and information which I am pledged not to divulge, publish or reveal by writing, word, conduct or otherwise pursuant to Section 2 of this agreement.

8. I understand that the HPSCI Rules provide that the employment of any staff member who violates the Rules may be immediately terminated or that other appropriate disciplinary action may be taken.

9. I understand that, in the event the HPSCI seeks to terminate my employment on the basis that I have violated the terms of this agreement, the HPSCI will provide me, in advance of my termination, a written statement setting forth the alleged violations with which I am charged.

10. I hereby assign to the United States Government all rights, title and interest in any and all royalties, remunerations, and emoluments that have resulted or will result or may result from any such divulgence, publication or revelation of information prohibited from disclosure under the terms of this agreement.

11. I understand that the United States Government may, prior to any unauthorized disclosure by me, choose to apply to any appropriate court for an appropriate order prohibiting disclosure. Nothing in this agreement constitutes a waiver on the part of the United States for criminal prosecution for any breach of this agreement on my part. Nothing in this agreement constitutes a waiver on my part of any possible defenses I may have in connection with either civil or criminal procedures which may be directed against me. Nothing in this agreement limits in any way any of the legal rights, responsibilities, or privileges which may exist for either party under H. Res. 658 or the laws or the Constitution of the United States.

12. I have read the provisions of the Espionage Laws, Sections 793, 794, and 798, Title 18 of the United States Code, and Section 783(b) of Title 50 of the United States Code and I am aware that unauthorized disclosure of certain types of information may subject me to prosecution for violation of these laws. I have read Section 1001 of Title 18, United States Code

and I am aware that the making of a false statement herein, is punishable as a felony. I have also read Executive Order 11652, as amended, and the implementing National Security Council Directive of 17 May 1972, as amended, relating to the protection of classified information.

13. Unless released in writing from this agreement, or any portion thereof, by the Chairman of the HPSCI with concurrence of the DCI, I recognize that all the conditions and obligations imposed on me by this agreement apply during my Committee employment or engagement and continue to apply after the relationship is terminated.

I make this agreement without any mental reservations or purpose of evasion, and I agree that it may be used by the HPSCI in carrying out its duty to protect the security of information provided to it.

Signature

Date

WITNESS:

Signature

Date